



The conclusions reached in sections B through D were agreed upon by the Commission at its September 27th meeting, and thus the only changes made to these sections were non-substantive edits submitted by Commissioner Knight and other Commissioners during the meeting. Per discussion at the meeting, the conclusion reached in section A which stated that state officials could not serve on solicitation committees and could not choose businesses for solicitation has been deleted – state officials are simply prohibited from performing the actual solicitation of employers of lobbyists and lobbyists. The general conclusion reached in section A has otherwise not been changed from the previous draft; however, the section has been re-written based upon the discussion at the meeting (and additional information has been added to the “Background”). Finally, Commissioner Knight’s recommended conclusion for this section has been highlighted, and a recommendation made regarding the conclusion.

ADVISORY OPINION 07-11

Interpretation of T.C.A. § 3-6-305,
with respect to state officials soliciting
contributions from employers of lobbyists.

INTRODUCTION

The following Advisory Opinion is in response to a written inquiry from Ms. Mary Margaret Collier, Director of the Bond Finance Division of the State of Tennessee Comptroller’s Office, as to whether the Tennessee Government Finance Officers Association (“TGFOA”) may, under the Comprehensive Governmental Ethics Reform Act of 2006 (“the Act”), solicit contributions from various service providers and vendors for sponsorships of events.

Ms. Collier asks the following questions:

- (1) Does the Act permit TGFOA to solicit door prizes or cash contributions for sponsorship of an event if the person soliciting the contribution is a state official? Does the analysis change if the state employee is acting on behalf of an organization that is an unincorporated affiliate of an incorporated organization which has members from both the public and private sectors?
- (2) Does the Act permit TGFOA to solicit contributions from an organization that does not directly employ a lobbyist, but which is a member of a parent organization that employs a lobbyist?
- (3) Does the Act permit TGFOA to solicit contributions from cities or counties that have registered lobbyists? Does it matter if the lobbyist is hired by a board, commission or agency of the city or county?
- (4) Are contributions from law firms which provide lobbying services treated as gifts under the Act?

ANSWERS:

In response to the above questions, the Tennessee Ethics Commission (“Commission”) concludes:

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- (1) The TGFOA is a professional organization for government officials, and thus membership therein is not distinguishable from the member's status as a government employee. Accordingly, those members of the TGFOA who are state officials may not solicit gifts or contributions from lobbyists or employers of lobbyists. This analysis will not change based upon the fact that an organization is unincorporated.
- (2) See Tennessee Ethics Commission Advisory Opinion 07-01 for a detailed analysis of the application of the gift ban to affiliate members of organizations that employ lobbyists.
- (3) The TGFOA is not affected by counties or cities that employ registered lobbyists because government entities are not considered to be "employers of lobbyists" for the purposes of the gift ban and are therefore permitted to donate door prizes or make other contributions. However, state employee members of TGFOA are prohibited from soliciting or accepting donations from any third-party lobbyists employed by such government entities.
- (4) The law firm does not meet the definition of either an "employer of a lobbyist" or a "lobbyist" for the purposes of the gift ban, and thus there are no restrictions on soliciting contributions from such a firm.

BACKGROUND

Ms. Collier is the Director of Bond Finance in the State of Tennessee's Comptroller's Office and incoming President of the TGFOA. The TGFOA states that it is "a professional organization whose purpose is to enhance the practice of governmental finance in Tennessee's 347 cities and 95 counties." Its membership includes public finance officials, including finance officers, city and county managers or administrators, accountants, clerks, recorders, treasurers, or auditors, whether elected or appointed, and officials and employees of the State of Tennessee, the Municipal Technical Advisory Service, and the County Technical Assistance Service. From time to time, the TGFOA solicits contributions from various service providers and vendors for the sponsorship of events. This year, the TGFOA intends to seek sponsorships for training events, golf tournaments and a networking event.

DISCUSSION

A. SOLICITATION OF GIFTS AND CASH CONTRIBUTIONS FOR EVENT SPONSORSHIP BY AN INCORPORATED ORGANIZATION

Can TGFOA members solicit door prizes or cash contributions for sponsorship of an event? Does the analysis change if the organization is an unincorporated affiliate of an incorporated organization with members from both the public and private sector?

T.C.A. § 3-6-305(a)(2) provides that state officials may not solicit or accept, directly or indirectly, a gift from an employer of a lobbyist or a lobbyist, unless an exception applies.

According to the facts provided, TGFOA, whose membership is comprised of state and local government officials, wants to solicit contributions from various service providers and vendors for the sponsorship of events. T.C.A. § 3-6-305 does not restrict solicitations by *local* government officials,

but the statute prohibits *state* officials from soliciting gifts from lobbyists or businesses which are employers of lobbyists.

State officials are often members of, or volunteers for, non-profit organizations and professional associations, and in that capacity may solicit contributions, depending upon the organization or association. An organization such as the TGFOA, however, is an established and recognized professional organization for local and state government employees. In addition, its purpose is to enhance the finance practices of Tennessee government. Accordingly, it is difficult, if not impossible, for the state official, acting on behalf of TGFOA, to be seen as performing a role separate from his or her status as a state employee when soliciting contributions from employers of lobbyists.

Regarding the TGFOA, those members who are state officials are prohibited from directly soliciting businesses and organizations that are employers of lobbyists. In addition, any state officials who serve on a committee that is organized by the TGFOA for the purposes of soliciting businesses are prohibited from soliciting any businesses that are employers of lobbyists (e.g., only those TGFOA members who are not state officials may solicit employers of lobbyists). Thus, pursuant to T.C.A. § 3-6-305(a)(2), TGFOA members may solicit contributions or gifts from vendors and service providers to sponsor events, provided that state officials do not solicit contributions from employers of lobbyists.

Regarding unincorporated affiliates, the analysis will not change based solely upon whether the organization is incorporated or unincorporated.

In soliciting contributions for TGFOA, a state official is not directly or indirectly soliciting or accepting a gift for himself or herself, but for the organization.

The conduct intended to be prohibited by the gift ban is the same, regardless of whether the state official is soliciting an employer or lobbyist in their own name or in the name of a 3rd party. If the role of the individual as state official were distinguishable from the individual's role as a representative of the organization, then a solicitation in the name of the organization would not be a gift to the state official. However, when those roles are indistinguishable, the same dangers associated with solicitation for the individual's personal use exist with solicitation for the organization's use.

As drafted, the Opinion will allow state employees to fully participate in the organization, with the exception of personally calling or writing those individuals and organizations that are registered as employers or lobbyists, for the purpose of soliciting donations

B. SOLICITATION OF GIFTS AND CASH CONTRIBUTIONS FROM AN AFFILIATE MEMBER OF AN ORGANIZATION THAT EMPLOYS A LOBBYIST

Does the Act permit the TGFOA to solicit contributions from an organization that is not an employer of a lobbyist, but which is an affiliate member of a parent organization that employs a lobbyist?

See Tennessee Ethics Commission Advisory Opinion 07-01 for a detailed analysis of affiliate members. In general, however, the gift ban does not apply to organizations that do not directly employ their own lobbyist, but who are affiliate members of organizations that are employers of lobbyists.

C. GIFTS OR CASH CONTRIBUTIONS MADE BY CITIES OR COUNTIES WHICH EMPLOY A LOBBYIST

Does the Act restrict TGFOA's actions with cities or counties that have registered lobbyists? Does it matter if the lobbyist is hired by a board, commission or agency of the city or county?

T.C.A. § 3-6-301(15)(D) states: "Lobby" does not mean communications by an employee of a school board, municipal utility, utility district, or any department, agency, or entity of state, county or municipal government; provided, however, that, if the board, utility, district, department, agency or entity employs, retains or otherwise arranges for lobbyist services in this state by a contractor, subcontractor or their representative who is not an employee of such board, utility, district, department, agency or entity, then "lobby" includes communications by the contractor, subcontractor or other representative shall comply with the lobbying registration and other provisions of this part pertaining to lobbyists; provided further, however, that the board, utility, district, department, agency or entity that employs the contractor, subcontractor or other representative is not deemed to be an employer of a lobbyist for purposes of this part.

Counties and cities, and any political subdivision thereof, are not considered to be employers of lobbyists. Therefore, such government entities are permitted to donate door prizes or make other contributions to the TGFOA. However, in the event that the city or county employs a third-party lobbyist rather than an in-house lobbyist, the gift ban is applicable to that third-party lobbyist. Thus, state employee members of TGFOA may solicit donations or contributions from local governmental entities and subdivisions thereof, but may not solicit individual third-party lobbyists for such governmental entities.

D. CONTRIBUTIONS BY LAW FIRMS WHICH PROVIDE LOBBYING SERVICES

Are contributions from law firms who provide lobbying services treated as gifts under the Act?

T.C.A. §§ 3-6-304 through 305 prohibit state officials from soliciting or accepting gifts provided by lobbyists and employers of lobbyists. Regarding the law firm referenced in the question, sufficient facts are not provided to determine whether the firm would be considered a "lobbying firm" as defined by T.C.A. § 3-6-301(16)¹. However, regardless of whether the law firm is a "lobbying firm", under the definition of an "employer of a lobbyist" contained in T.C.A. § 3-6-301(8), a lobbying firm is not the employer of any lobbyist within the firm. The definition of an employer of a lobbyist provides that an employer is any person or entity that employs, retains or otherwise arranges for a lobbyist to engage in lobbying *on behalf of the person or entity* for compensation. Under the question

¹ T.C.A. § 3-6-301(16) defines a "lobbying firm" as "any firm, corporation, partnership or other business entity that regularly supplies lobbying services to others for compensation."

posed, the lobbyists within the firm do not lobby on behalf of the law firm, but instead lobby for individual clients. Accordingly, the client which has hired the attorney to lobby on its behalf is the employer against which the gift prohibitions apply.

Thus, the law firm referenced in the question is not considered to be an “employer of a lobbyist” under the statute and state officials are not prohibited by T.C.A. §§ 3-6-304 through 305 from soliciting or accepting donations from such firms. However, state officials may not solicit individual lawyers within the firm who are registered lobbyists.

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Date: October 23, 2007